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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,446	05/10/2005	Michael Anthony Pugel	PU020452	4710
24498	7590	01/20/2011		
Robert D. Shedd, Patent Operations				EXAMINER
THOMSON Licensing LLC				LEE, PHILIP C
P.O. Box 5312			ART UNIT	PAPER NUMBER
Princeton, NJ 08543-5312			2453	
			MAIL DATE	DELIVERY MODE
			01/20/2011	PAPER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/534,446

Filing Date: May 10, 2005

Appellant(s): PUGEL ET AL.

Joel M. Fogelson
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/15/2010 appealing from the Office action
mailed 04/28/2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:
Claims 1, 4-14 and 20 are rejected and pending in the application.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

7,292,604	Godwin et al	11-2007
6,710,715	Deeds	03-2004
2003/0121036	Lock et al	06-2003
5,940,776	Baron et al	08-1999

(9) Grounds of Rejection

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-14 are rejected under 35 U.S.C. 101 because “An alert receiver” comprising a discriminator and a warning device (i.e., software) (see page 4, lines 23-25 of the specification and 32, 30 of fig. 2) does not include any functional structure of a machine. A machine comprising a discriminator and a warning device (i.e., software) is considered as program per se, which is not one of the categories of statutory subject matter.

Claim Rejections – 35 USC 103

3. Claim 1, 4, 7-9, 12, 14 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Godwin et al, U.S. 7,292,604 (hereinafter Godwin).

4. As per claim 1, Godwin teaches the invention substantially as claimed comprising:
a discriminator in said alert receiver which receives encoded signals from a network (col. 12, lines 33-40; fig.1; col. 14, lines 47-50; col. 15, lines 48-50), the encoded signals for reporting an event from an information source coupled to the network (col. 15, lines 41-43), wherein the discriminator compares codes designating geographical locations, which are in the encoded signals (col. 14, lines 62-67; col. 15, lines 41-47), to user selected codes (col. 14, lines 26-35; col. 16, lines 4-5) associated with specific localities to determine whether to alert a user (col. 15, lines 41-52); wherein

said encoded signals are encoded data stream in the form of a plurality of data packets (col. 13, lines 13-29, 51-53), where auxiliary information containing said codes is distinguished from audio and video information by use of packet identifier (PID) (col. 13, lines 60-63; col. 14, lines 61-66)

 said geographical location codes are placed within the user data fields of a header of a data packet from said plurality of data packets (col. 14, lines 62-65; 74, 78, fig. 5); and

 said discrimination uses said PID information and said user data fields to determine geographic regions related to said event (col. 13, lines 53-57; col. 14, lines 63-67); and

 a warning device responsive to a result from the discriminator of comparing the codes designating geographic locations included in the encoded signals to the user selected codes associated with specific localities, wherein said warning device outputs an alarm for each specific locality in the form of at least one of an audible alarm and a visual alarm (col. 15, lines 40-52; col. 16, lines 4-5, 12-15).

5. Although Godwin teaches the encoded signals (i.e., EMS stream broadcast with the compressed video and audio) data stream is compressed (col. 13, lines 20-21, 27-28, 40-41; col. 15, lines 45-47), however, Godwin does not specifically teach encoded in an MPEG-2. The background of the invention of Godwin reference teaches encoded signals are encoded in an MPEG-2 (col. 2, lines 5-12).

6. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to combine the teachings of Godwin and the background of the invention

because the background of the invention's teaching of encode signal in an MPEG-2 would increase the efficiency of Godwin's system by allow a reduction in the bandwidth required for transmission of the signals.

7. As per claim 4, Godwin teaches the invention substantially as claimed in claim 1 above. Godwin further teaches wherein the codes associated with specific localities include codes designating a user's geographic location (col. 15, lines 41-52).

8. As per claim 7, Godwin teaches the invention substantially as claimed in claim 1 above. Godwin further teach comprising a display, which renders textual messages from the encoded signals when a comparison criterion is met (col. 15, lines 8-9, 41-54).

9. As per claim 8, Godwin teaches the invention substantially as claimed in claim 1 above. Godwin further teach wherein the event is associated with the codes designating geographic locations and the codes associated with specific localities designate an aspect of the alert receiver such that when one or more event codes match one or more of the codes associated with specific localities, the warning device responds (col. 15, lines 41-54).

10. As per claim 9, Godwin teaches the invention substantially as claimed in claim 8 above. Godwin further teaches wherein the aspect of the alert receiver includes a code designating a location of the alert receiver (col. 15, lines 49-52).

11. As per claim 12, Godwin teaches the invention substantially as claimed in claim 1 above. Godwin does not specifically teach that the receiver is always on. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to allow the receiver to be always on for being responsive to the encoded signals because by doing so it would be able to receive unexpected warning signal that can occur at any time.

12. As per claim 14, Godwin teaches the invention substantially as claimed in claim 8 above. Godwin further teaches wherein the encoded signals are included in a data packet inserted into a data stream, wherein the data packet is identifiable as an alert message (col. 15, lines 45-47; col. 13, lines 51-63).

13. As per claim 20, Godwin teaches the invention substantially as claimed for receiving an alert message concerning an emergency situation affecting a user location (col. 15, lines 41-52), the user location having a user selected code designation (col. 14, lines 62-67; col. 15, lines 41-47) associated therewith comprising the steps of:

receiving the alert message comporting to a data format (col. 13, lines 13-29);
comparing codes that designate geographic locations to the user selected code designation associated with a user location (col. 13, lines 53-57; col. 14, lines 63-67; col. 15, lines 40-52; col. 16, lines 4-5, 12-15), the codes that designate geographic locations being in user data fields of headers of auxiliary data packets in a data stream in the form with comprise the alert message (col. 13, lines 21-29, 60-63; col. 14, lines 61-66), where said comparison also distinguishes said auxiliary data packets from other data packets by using the packet identifiers

(PIDS) associated with said auxiliary data packets (col. 13, lines 60-63; col. 14, lines 61-66); and rendering an alert upon a match of the code that designate geographic locations and the user selected code designation associated with the user location (col. 15, lines 48-54).

14. Although Godwin teaches the encoded signals (i.e., EMS stream broadcast with the compressed video and audio) data stream is compressed (col. 13, lines 20-21, 27-28, 40-41; col. 15, lines 45-47), however, Godwin does not specifically teach encoded in an MPEG-2. The background of the invention of Godwin reference teaches encoded signals are encoded in an MPEG-2 (col. 2, lines 5-12).

15. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to combine the teachings of Godwin and the background of the invention because the background of the invention's teaching of encode signal in an MPEG-2 would increase the efficiency of Godwin's system by allow a reduction in the bandwidth required for transmission of the signals.

16. Claims 5, 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Godwin in view of Deeds, U.S. Patent 6,710,715 (hereinafter Deeds).

17. As per claim 5, Godwin teaches the invention substantially as claimed in claim 4 above. Godwin does not specifically teach Federal Information Processing System. Deeds teaches

wherein the codes designating geographic locations include Federal Information Processing System (FIPS) codes (col. 13, lines 44-45).

18. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to combine the teachings of Godwin and Deeds because Deeds's teaching of FIPS would increase the compatibility of Godwin's system by providing a federal information standard for encoding data.

19. As per claim 6, Godwin teaches the invention substantially as claimed in claim 1 above. Godwin does not specifically teach Specific Area Message Encoding. Deeds teaches wherein the encoded signals include Specific Area Message Encoding (SAME) (col. 13, lines 35-37).

20. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to Godwin and Deeds because Deeds's teaching of SAME would increase the compatibility of Godwin's system by providing a protocol for encoding emergency alert to be communicated to a public.

21. As per claim 10, Godwin teaches the invention substantially as claimed in claim 1 above. Godwin does not specifically teach the alert receiver includes codes designating geographic locations. Deeds teaches wherein the aspect of the alert receiver includes the codes designating geographic locations (col. 10, lines 58-61).

22. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to Godwin and Deeds because Deeds's teaching of codes designating geographic locations would increase the alertness of Godwin's system by allowing plurality of geographic locations to be designated.

23. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Godwin in view of Lock et al, U.S. Patent Application Publication 2003/0121036 (hereinafter Lock).

24. As per claim 11, Godwin teaches the invention substantially as claimed in claim 1 above. Godwin does not teach a head end station through a cable network. Lock teaches a similar alert receiver, wherein the alert receiver is coupled to a head end station through a cable network ([0005]).

25. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to combine the teaching of Godwin and Lock because Lock's teaching would allow alert messages to be distributed to users in Godwin's system via CATV distribution cables network.

26. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Godwin in view of Baron et al, U.S. Patent 5,940,776 (hereinafter Baron).

27. As per claim 13, Godwin teaches the invention substantially as claimed in claim 1 above. Godwin does not teach vertical blanking interval of received television signal. Baron teaches a similar receiver, wherein the encoded signals include characters inserted into a vertical blanking interval (VBI) of a received television signal (col. 2, line 66-col. 3, line 9).

28. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to combine the teaching of Godwin and Baron because Baron's teaching would allow alert messages such as National Weather Service (NWS) messages to be inserted in a television signal for transmission to a remote user in Godwin's system.

(10) Response to Argument

In the remarks, applicant argued that:

- (1) Claims 1-14 are directed to statutory subject matter.
- (2) The prior arts fail to teach said geographical location codes are placed within the user data fields of a header of a data packet from said plurality of data packets; and said discriminator uses said PID information and said user data fields to determine geographic regions related to said event.
- (3) The prior arts fail to teach a warning device responsive to a result from the discriminator of comparing the codes designating geographic locations included in the encoded signals to user selected codes associated with specific localities, wherein said warning device outputs an alarm for

each specific locality in the form of at least one of an audible alarm and a visual alarm.

29. In response to point (1), page 4, lines 23-25 of the specification states: "the elements shown in the FIGS. may be implemented in various forms of hardware, software or combination thereof." This means the elements of "discriminator 32" and "warning device 30" in fig. 2, which are elements of FIGS as stated in page 4, lines 23-25 of the specification, can be in the form of software. Therefore, "An alert receiver" of claim 1 comprises only software elements. Based on the broadest interpretation, a "discriminator" as claimed includes the scope of a software module programmed to perform the claimed discriminator's function of receiving signals and comparing codes of the signals to user selected codes, and a "warning device" as claimed includes the scope of a software module programmed to perform the claimed warning device's function of outputting an alarm in the form of at least one of an audible alarm and a visual alarm. It is noted that the term "device" is interpreted according to the IEEE 100, The authoritative dictionary of IEEE standard terms, seventh edition, which defined the term "device" is defined as software. Accordingly, the rejection is maintained.

30. In response to point (2), Godwin teaches several emergency messaging system (EMS) signals can be broadcast in a common video/audio (col. 15, lines 41-47). The EMS signal together with video and audio form a particular program data stream (13, lines 13-15, 18-20, 51 of fig. 2). Godwin teaches each of the EMS signal includes a geographic identifier placed in the header identifying regions or localities (col. 14, lines 61-67). Example of the geographic

identifier includes zip code, area code, or actual physical longitude and latitude locations (col. 14, lines 27-32). The zip code or physical longitude and latitude locations placed in the header is equated to the claimed “said geographical location codes that are placed within the user data fields of a header of a data packet from said plurality of data packets (i.e., header fields)”. Godwin further teach the particular program data stream 51 as explained above is multiplexed with other program data streams 53 to form a multiplex data stream 55 in figure 2 (col. 13, lines 42-44). The individual program data streams in the multiplex data stream 55 are divided into packets, each with an ID corresponding to the “channel” in the multiplex data stream 55 (col. 13, lines 51-57). The individual segments of the programs will be reassembled at the receiving end by using this ID (col. 13, lines 55-57). At the receiving end, the identifier for identifying the channel in the stream in order to reassemble each particular program streams and the geographic identifier in the header fields (i.e., user data fields) of packet of the program streams for identifying regions or localities is used in order for the receiver to extract the geographic identifier from each particular program streams for comparison to determine the geographic region. This means Godwin teaches the claimed limitation of “said discriminator uses said PID information (i.e., identifier for identifying the channel) and said user data fields (i.e., header fields containing the geographic identifier such as longitude and latitude locations) to determine geographic regions related to said event (i.e., comparing geographic identifiers to determine the regions or localities related to the emergency event)”.

31. In response to point (3), Godwin teaches various geographic identifiers are stored in the receivers (col. 16, lines 4-5). The geographic identifiers at the receivers can be inputted

manually (col. 14, lines 33-35). These geographic identifiers at the receivers are compared to geographic identifiers in the broadcast signals (col. 15, lines 41-47). The received signal is displayed when the various geographic identifiers at the receiver correspond to the geographic identifiers in each of the EMS streams broadcasted in a common video/audio (col. 15, lines 41-47) (i.e., comparing the codes designating geographic locations included in the encoded signals to user selected codes associated with specific localities, wherein said warning device outputs an alarm for each specific locality in the form of at least one of an audible alarm and a visual alarm).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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